

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

John Lamar Barnes,  
Plaintiff

Case No. 1:02-cv-00101

vs

Ohio Dept. of Rehabilitation  
and Correction, et al.,  
Defendants

**ORDER**  
(Spiegel, J.; Sherman, M.J.)

This matter is before the Court on defendants' motion to stay the time to reply to plaintiff's opposition to defendants' motion for summary judgment (Doc. 58), and plaintiff's memorandum in opposition thereto. (Doc. 59). Defendants seek a stay of time to file their reply brief until such time as the Court rules on defendants' objections to plaintiff's response to the Show Cause Order. (Doc. 54).

On July 29, 2003, the Court ordered plaintiff show cause in writing within fifteen (15) days why this Court should not dismiss this case for lack of prosecution for failing to respond to defendants' motion for summary judgment. (Doc. 53). Defendants filed a motion for summary judgment on March 3, 2003. (Doc. 39). On April 29, 2003, by notation order, the Court granted plaintiff's motion for extension of time to respond to the motion for summary judgment. (Doc. 45, notation order). On May 14, 2003, the Court granted plaintiff's request for an extension of time to conduct discovery and respond to the motion for summary judgment. (Doc. 49). On May 20, 2003, the Court granted plaintiff's motion for extension of time until June 26, 2003 to respond to defendants' motion for summary judgment. (Doc. 51). When plaintiff failed to file his response, the Court issued its Show Cause Order.

In response to the Show Cause Order, plaintiff states he mailed his legal work to a private attorney to review for possible representation in this matter. (Doc. 54). Plaintiff states the attorney declined to represent him. Plaintiff attaches correspondence from the attorney to his response to the Show Cause Order. *Id.* Plaintiff states he also requested a further extension of time on June 22, 2003, pending a response from the attorney. Plaintiff states he did not learn his motion for extension

of time was not received by the Court until he received the Court's Show Cause Order. Plaintiff has since filed a response to the motion for summary judgment. (Doc. 57).

Defendants' contend that plaintiff has not been diligent in pursuing his lawsuit and that the amount of delay in responding to the motion for summary judgment causes prejudice to the defendants. However, defendants do not state how they have been prejudiced.

In view of plaintiff's pro se status and in recognition of the strong policy in favor of resolving disputes on their merits, the Court declines to recommend this matter be dismissed based on plaintiff's delay in filing his response to the motion for summary judgment. Therefore, defendants' objections to plaintiff's response to the Show Cause Order are **OVERRULED**. Defendants' motion to stay the time to reply to plaintiff's opposition to defendants' motion for summary judgment (Doc. 58) is **GRANTED**. Defendants are granted an extension of time until fifteen (15) days from the date of this Order to file their reply brief.

**IT IS SO ORDERED.**

Date: 9/25/2003

s/Jack Sherman, Jr.  
Jack Sherman, Jr.  
United States Magistrate Judge